

FILED

JUL 23 2019

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
SITTING AT TULSA, OK

Mark C. McCartt, Clerk
U.S. DISTRICT COURT

1. Melissa Phillips

Plaintiff

VS.

Case No. **19 CV 406 JED - FHM**

1. United States Army Corp Of Engineers
Tulsa District
And

Defendant

2. Jeff Knack USACE Chief of Operations
Tulsa District Official and Individual Capacities
And

Defendant

3. Craig Robbins Lake Eufaula Project manager for
USACE Official and Individual capacities

Defendant

CIVIL RIGHTS CLAIM, ADA Title II and III, Discrimination against disabled persons violating equality, Retaliation claim, Trespass, Wrongful taking of property rights and of taking prescriptive easement, 1st Amendment violation, Violation of due process, defamation, slander, Libel, Intentional Infliction of emotional Distress, Negligent infliction of emotional distress, requesting Judicial review, declarative injunction, other injunction.

Federal Jurisdiction

Federal law and Constitutional rights involved in this case by such acts:

ADA Title 1,2,3 42 U.S.C. 1983, 1985 AND 1986 AND 1986(3), 5 U.S.C. Section 702, 701-706, 28 U.S.C. 1331, 28 U.S.C. 2201, Title 36 U.S.C. pedestrian access of lakes. Constitutional right to due process, peaceful enjoyment of property rights, liberty

VENUE

Tulsa USACE defendants have the most decisions power over actions involved and have done most of the acts involving constitutional rights and federal law thus venue is proper in this court.

BRIEF STATEMENT OF FACTS

1. In May of 2019 Lake Eufaula project manager for United States Army corp of Engineers, hereon known as USACE, did take over a public access road that has always been used by the public and particularly local property owners whose taxes pay for such

Fees Pd
3 summons

county maintained until may of 2019 road which accesses the lake and property values have relied on since existence of the lake.

2. Retaliation and Due Process violation. Plaintiff did begin to get petitions signed for various reasons and was assaulted, harassed, intimidated, retaliated against in various ways while the local residents on one street were given sole private use of the local shoreline passed the barriers the USACE put at end of the 2 local access roads.

3. Violation of ADA. The current policy about allowing disabled people electric wheelchair access and disable scooter access to the pedestrian access now remaining is denied and the USACE has a policy that redefines what access is to disabled people.

4. Violation of ADA. USACE also refuses to comply with ADA in the recreation facilities they receive money for from the public to use which no justified reason exists to not become ADA compliant. ONLY ONE facility in a lake they claim has over 800 shoreline miles is ADA compliant.

5. Trespass, Retaliation, Due Process violation, IIED. Chief of operations defendant Jeff Knack did trespass on plaintiff's private residence using park rangers to act as mail carriers for a letter he already mailed out as act of retaliation, aggression and due process violation, and they stood on her front porch when she was resting from second surgery in 1 month not even dressed yelling her name until she answered the door.

6. Such actions are outside scope of employment and directed she no longer be allowed to seek resolution after being told she could contact the commander and given his address and name about the conspiracy to privatize the shoreline on Boston and Cleo street of Longtown, Oklahoma Williams Subdivision, to renter residents. This despite harming the entire neighborhoods rights and property value, plaintiff's included. His act served to try to keep superiors from learning what was going on and intimidate her and hinder her resolution process. Such violates due process.

7. Constitutional violations deprivation of peaceful enjoyment of life liberty and

peaceful enjoyment of property, ADA violations of lake access to disabled person, theft of property rights, malicious prosecution, defamation, and in violation of Title 36 U.S.C.

FACTS IN DETAIL OF ACTIONS BY DEFENDANTS OF THIS CASE

1. Of recent, the Corp of Army Engineers local office did without any notice to local residents and no justified reasons violating their own federal regulations and constitutional right to peaceful enjoyment of property and rights to such properties did put large concrete barriers to a loop road which is and has been a public road that evidence will show county and community taxpayers pay for such road. The road is a public road that loops around and is lake access adding much value to properties in a depressed marketed area that lake access gives great value to.

2. They did this for no reason but one landowner rented a lot at the end of one of the loop roads and conspired with local sheriff department staff to cut off the whole neighborhood to the lake shore there on the loop and violate law by denying access to the lake shore, the corp of engineer with no explanation, no compensation to local property owners who's right to such lake access they invested in when buying properties in the area, put large barriers in the middle of the 2 loop roads cutting off almost half of the public tax payers public road. He said to stop boat launching there, atv riding there and preserve shoreline from erosion because 2 Boston street renters complained.

Said defendant Craig Robbins did admit it was because the 2 renters called making various complaints of public use of the lake there that has always been allowed since the existence of the lake. NEVER before did the Corp put any sign indicating the road was not public at the end of Cleo and Boston street of Williams subdivisions in Longtown Ok. They did not put such barriers in other open lake access roads in the area just there to give sole private use to the local renters. It is contradictory to allow the shoreline to be used as large boat parking lot and knowing the renters are launching boats there and evidence will

prove as such but they refuse such evidence. There is no concern for shoreline preservation. Evidence such as videos, pictures, and other, with many witness statements.

3. The renters wanting to keep all others out, were regularly harassing people saying it was theirs and private, attacked plaintiff and took her petition paper to get barriers removed from her hands, cursed her out called names, telling her and others the road where the govt sign said government property is now private and no one would any longer be allowed there. Sheriff's dispatcher tried to act like he did no wrong so plaintiff asked for a deputy to assist.. The Park Rangers were called. They refused to deal with them either about running off people from using the lake there at end of Cleo and Boston street. Instead they harassed her for using her right to petition and collect signatures from the public and the local residents who also were upset at the incidents. They had duty to enforce the federal law and failed to do so and continue to. Instead defamed Plaintiff.

4. This caused significant anxiety and stress to use such intimidation, threats, make up lies to falsely accuse plaintiff openly when she said she had evidence to prove what they had done and were doing, by saying a dispatcher claimed she threatened to blow up the barriers. The Park Rangers went along with this and when she said the call to dispatcher was recorded and she would file complaint for such lie, the Rangers still refused to do anything about the residents violating Title 36 stopping peoples right to access the lake. Later Plaintiff did record the dispatcher confirming the deputies did lie she said no such thing about saying the plaintiff made any kind of comments.

They just made that up to intimidate her with threats of implying malicious prosecution if she continued to stand up for right to access the lake there. Instead the Park Rangers allowed others to assault and harass herself and others, while allowing them to repeatedly go past the barriers and load their boats there and park their boats on the shore for days on end blocking others from using the shore there. They even laughed at people saying if they did not stop they would call the authorities saying go ahead they like us. ALL recorded. The blocks block even pedestrian access which is violation of law.

USACE saying they were putting barriers up to block vehicles and refusing to take

evidence from others of videos and pictures that the residents on Boston street were indeed launching their boats past the barriers in front of all to see and basically laughing in everyones face. Few lawyers will take a case unless alot of money in damages is to be made and few can afford the many thousands of dollars to take this to court so they defiantly acted like your not rich and you cant fight us so suck it. All incidents are recorded as evidence by many. They even stake to ground with ropes their boats.

5. It does not protect the shoreline to allow large boats to park right up to dry land or near it where bottom of the boat touches the ground and launch boats. The rangers are not there unless someone calls to complain so they refuse to take evidence to prove what they are doing because they know they are doing it and they also allowed private fence in the water at end of Boston street. Claiming to be preserving shoreline as reason to close the road and block the end of roads while ignoring evidence and allowing shoreline parking of boats, fence barriers, private use by renters in violation of Title 36 to not allow, is not an excusable reason to cut off access to roads there and then deny pedestrian access to disabled people by making it harder to get to the shoreline with half a road blocked, is discriminating to disabled people for equal access to even pedestrian access.

6. Mooring rules do NOT allow large boats to use shoreline as a parking lot for days on end which blocks others from shoreline fishing. Around a lake especially in low market neighborhoods lake access roads is a very important part for property values. This lake access roads have always been open and maintained by the county and many people have signed the petitions stating as such. MANY people have witnessed the county maintaining the roads all the way to the end and it was always used for driving to the end of the road to park. Taking 300 feet of a road making the shoreline few hundred feet away and denying even allowing pedestrians to use electric wheelchair is ADA violation.

The USACE putting huge ugly blocks that block even large persons from passing them is blocking pedestrian access in violation of federal law. They put a sign in a nice neighborhoods. It is unequal treatment to put only a sign in a nicer home neighborhood and ugly concrete blocks that block even people from walking to the shore. They are

forced to trespass on lots adjoining the road to get to the shore for pedestrian access.

7. Plaintiff met twice with the Lake Eufaula project manager in his office about the end of the road being now 250 and more feet from the shoreline and people who are disabled having to walk so much farther, and the issue of the stopping golf carts from using that part of the road to get closer to the shore. Elderly and disabled now simply cannot go there. Plaintiff is a disabled person under ADA with severe Spine disease that affects balance, pain, and uses a walker and disabled scooter. Every disc in her spine is herniated and she has had multiple spine surgeries and fusions. Pain levels vary from day to day, so not being able to get to the shore and park to the end of the road as everyone always have is a big deal. Being denied equal pedestrian access by their redefining what access is as will be explained, and denying electric wheelchair or scooter in the lake road she and others invested in when buying their home to have local access to from their home is discriminating. Title 36 forbids USACE from restricting pedestrian access. Their saying disabled people cannot use an electric wheelchair or scooter does just that also in violation of ADA. Blocking pedestrians with huge blocks also is violation.

8. Originally the Project manager suggested possibly entering the agreement to have a local group or organization to maybe sign agreement with USACE to allow a parking area at the end of the road there but at cost of the people. Plaintiff formulated such group and collected signatures for the petition to have this and how the road was always used by the public and maintained by the county. Yet when the local residents kept running off visitors and local residents from the shoreline there the Park Rangers were allowing this, and their putting fence in the water along with launching boats there. Plaintiff then called the district office about the rangers conspiring with the residents to allow this.

9. The corp manager then retaliated by saying because someone called District he would not allow ANYONE to enter agreement to have parking there at end of road at cost of people which helps the local disabled people herself included and protect the property values at least some. Instead of dealing with the residents abuse of running people off and launching boats past the barrier and putting fence in the water he punished the victims

and violated their rights to petition to higher command for the abuses. Such is abuse of right to petition to address grievances deny due process and discriminate against equal access to the lake there for disabled pedestrians.

10. Worse, the USACE created a special permit for disabled persons to use vague description of motor ATV type vehicle like a golf cart or ATV. In non developed lake areas. Yet he said they have never granted such permit even one time. This is because they have gone beyond their authority and redefined what “access” means for disabled people. He said if someone has any access at all to a recreation facility within 7 miles from their home they can not have the permit to use ATV or golf cart.

11. Out of 800 shoreline miles only one facility is ADA compliant. If it is not ADA compliant then they can not say a disabled person has “access”. TRUE access is ADA compliant equal access. After plaintiff did complain to District about the actions of local residents running off others and launching boats and hogging the shoreline using shore as parking lot, putting barriers in the water etc, putting stakes in the land with ropes people can trip over harming the shoreline in violation of federal law, the corp manager got angry and even then tried to suggest that not even electric wheelchairs or disabled persons scooter is allowed at the end of the road near the shoreline.

Keep in mind this is a public road that was taken without notice, USACE allowed the public to believe was controlled by the county who did in fact maintain such road for decades with tax payers money and federal funds they got for recreation access roads. So to refuse even pedestrian access to disabled people who cannot walk on a roadway, is just hateful and not serving any good purpose. Evidence is available to prove county maintained the road no matter what the USACE or county may say. Any testimony by either the county has not maintained the entire roads for decades can be proven as false and impeached. The blocks also block people from entering the shoreline area. There is only about 1.5 feet between the blocks so large persons or person as plaintiff who uses a walker can not enter forced to enter grass areas of people edge of property to enter the

lakeshore area. This violates Title 36 that clearly says USACE can not prohibit or hinder pedestrian access, or allow anyone to hinder them.

12. Plaintiff does not believe a permit to use a wheelchair should ever be required on a road near the shoreline. Nor should the USACE be allowed to only have one ADA compliant facility in a lake 800 shoreline miles. ONLY if there is significant cost and burden should a facility not become ADA compliant. Having appropriate pathways around buildings and recreation sites that they take money from the public to use should be inclusive of disabled people. Instead they take public roads that have been open to local residents and public for decades and disallow wheelchairs equal access to pedestrian areas. Refusing to allow even public to pay for such parking area because he got mad when a person used right to petition district about local conspiracy of afore said actions is retaliatory in nature and violates 42 U.S. C. 1983, 1985, and 1986, (3).

13. Plaintiff spoke to the Legal Counsel once in Tulsa District putting forth her belief there is at the least prescriptive easement to the end of the road and also described the park rangers allowing the 2 residents to try to run off visitors when clearly Title 36 prohibits any interference with pedestrian access. Also the allowing them to launch boats past the barrier but no one else can, using the shoreline as boat parking lot for several boats and jet skis, putting fence barriers in the water etc. They said they would get back with plaintiff and a month went by and she heard nothing, while the abuses continued.

14. She called the park Rangers a couple more times trying to get the issue resolved about the boats and fencing in water and either got the run around or told they can do what they want basically depending on who was speaking. The ranger kept bringing up the barrier in the road issue as if that was the only reason plaintiff called and he was told repeatedly that issue is being referred to legal counsel and may go to court if not resolved and did not wish to discuss that with him repeating what her call was about to him.

15. The Tulsa once routed her to an Oolagah lake manager deliberately having someone who has no jurisdiction in any matter of the park ranger issues and boats etc, to hinder

getting any resolution. Then the phone receptionist said her call was returned. After she was given the Commanders name and address to write, 2 park rangers showed up on her porch yelling for her to answer the door. She was resting from surgery undressed, and had no desire to have any kind of visitors for any reason. The Chief of operations mailed her a letter saying plaintiff was not allowed to call since she mentioned a possible suit and only to write him to further hinder ability to go to highest level of administrative remedy and resolution in the matter.

The letter also falsely accused her of calling about the barriers in the road apparently reported by the scamming park rangers who plaintiff had to tell repeatedly purpose of her call was not about the barriers. The issues of the privatization of the shoreline was deliberately ignored and acting like no such complaint existed violates due process.

16. A copy of this suit shall be copied to the commander for the district. Any actions in retaliation by the defendants plaintiff wishes to reserve for additional acts to add to this claim.

17. WHY would local residents launch their boats past the barriers in plain sight for all to see who had been cut off after decades of use of the lake there but for they KNEW they would get by with it. WHY would residents boldly run up to people in plain sight for all to see and threaten them online to do more for trying to do a petition for such issue but he knew he would not be accountable? WHY would said renter tell people it is their lake their road and run off multiple people from the shoreline knowing it violates Federal law but they KNOW the park rangers and manager would do nothing?

18. The lake project manager said at one point they would put cameras down there to catch any violators but was a lie as they not only did not do that but refused to take multiple people's pictures and videos to prove what was going on. The park rangers flatly said they can park on the shoreline in violation of mooring rules and refused to do anything about the barriers put in the water by the renters. There are docks for a reason and rules about mooring and docking for a reason. One is to protect the shoreline and also

to prevent privatizing of shoreline that interferes with others rights to access the lake there. They even put stakes in the ground and ropes tying the boat blocking shore too.

19. It is outrageous that the renters do not even pay property taxes and all the rest of the community does and their tax dollars have gone to paying for the upkeep of the roads now blocked by USACE. The reasons to close a road always left open, which they let people believe the county had control, to cause it to cut off disabled people and only private use by renters at end of one street has not only no good reason to do such a thing but steps outside their scopes of employment as conspiracy to violate civil rights knowingly has been held by various federal courts as not a part of their job duties. Delivering a letter to hurry up and cut plaintiff off from contacting the commander when the letter was already mailed out is not part of his job duty and acting as mail carrier is not either. Certainly not to stand on someones porch and yell until they answer the door when uninvited. Such is retaliation, intimidation, trespass, and due process violation.

20. Making an open road closed and pedestrian access only should be equal to all people not exclusive to home owners with disabilities or any disabled persons for that matter. Having a vaguely described permit for motor vehicle allowed in pedestrian access areas like golf cart or ATV then later when spiffed about using constitutional right to petition to higher authority then suggest not even electric wheelchairs or disabled scooters can be used is retaliatory in nature violating rights of disabled.

21. Redefining what access to disabled persons should mean steps out of proper authority exceeding what their purpose to manage lakes is. Please declare as such.

22. . The USACE has easement title only to the lots at the end of the roads in question and strictly for the only purpose as is stated in the deed, to control flowage and prevent structures from being built on said lots not the road or use of road. In fact the deed clearly said the easement is subject to road easements. So any secretive sale of the end of the road to USACE with no notice to tax payers or property owners who's rights

would be affected should be null and void. Please declare as such.

The road by the lots they have easement title only to strictly for flowage and prevent structures built on such lot should not then later sell a public road with no notice to the public and hide it from the public until almost 60 years later, far exceeds the purpose they own the lots that adjoin the road to begin with. Putting eyesore ugly concrete blocks in the road is a nuisance, and harms values to properties. The conduct to allow renters to launch boats , use private use of the shoreline parking heavy boats on the shoreline using shoreline for parking lot for boats for days on end blocking others from use of the shore to fish as they have for decades, contradicts any excuse or alleged reason to put barriers in the road. Blocking pedestrian access with them certainly is not allowed.

23. For reasons stated herein, plaintiff does request Judicial Review by this Honorable court and grant declarative injunction and other injunctions. USACE receives federal appropriations to manage lake areas for specific purposes. They have easement title only to lots near shoreline on Cleo and Boston Street which is subject to road easements. They allege they were given the end of Boston Street and Cleo street to do as their purpose serves. They chose to leave said end of road open to the public who has been unaware of any said surrender of the road since the 60's. They allowed all people to advertise local access to lake there and ability to have room to park at the end of the road making it easier for disabled local residents and other visitors to visit the shoreline there. The ground is very level and easy for persons to maneuver for shoreline fishing which is allowed with even pedestrian access.

Equal access to the lake roads for the neighborhood that homebuyers invested in should be equal to all. Not tell disabled persons they cannot use it to go elsewhere as lake manager has. He is recorded saying just that. The county receives federal funds to maintain the roads and USACE has allowed the county to maintain the end of the roads there for decades with using taxpayers money. Property taxes for the county contribute to road maintenance budget. The federal funds for the county for recreational lake access roads also contributed to said roads. So USACE acting like they never gave any permission to the county to maintain and control such end of roads is a sham and fraud. It

can be proven they not only allowed the county to control and maintain the roads they let people believe with county plats at deed office showing county had control not USACE.

Further, to abandon a road to USACE if they did so legally must only be to purpose they have the lots easement title to begin with. The public roads adjoining the land lots they have easement only title to was to prevent building structures and to control flowage to allow lake flooding there if needed. It has not ever been to deny parking or access to disabled persons who use electric wheelchairs or scooters who live nearby or even to general public. Telling disabled people who live near they cannot have equal access as to other residents is not only in excess of their authority it violates ADA title 1 and 2,3.

24. For any acts this court accepts done by defendants that are outside scope of employment or exceeding authority plaintiff requests order to cease such acts and declare such acts are outside scope of employment and or in excess of their authority. Judicial review with declarative injunctions and other injunctions should be allowed by this Honorable court. Any torts committed by defendants considered by this court to be outside of scope of employment as alleged herein, plaintiff does request to be litigated by jury trial as allowed in this Honorable Court. Any torts which punitive damages is allowed outside of any immunity by said defendants Plaintiff request as a jury sees fit.

Plaintiff is mostly interested in getting injunction and declaration to protect equal access rights to the local lake access roads, and for appropriate improvements by USACE to recreational facilities that take money from people to use. Having only one facility ADA compliant out of over 800 shoreline miles is not equal access to the public. People should not have to drive hundreds of miles to get to an ADA compliant facility which the entity gets appropriations for money to operate the lake recreation facilities and in general the lake shorelines. USACE has authority to enforce federal law to prohibit persons from terrorizing visitors from using shoreline and prevent private use and hogging of shorelines. Their not only failure to do such is beyond negligence causing extreme distress to plaintiff and others, but is willful to claim to close roads they have had open for 60 years to prevent harm to shorelines while conspiring to privatize to certain renters who live near shoreline.

It is a conspiracy to refuse to take petitions and evidence to prove what the citizens are doing, and openly violating mooring rules, their own rules, lying to the public saying the renters can hog the shoreline with their boats. They are recorded saying such lies. When agency or entity violates its own rules and willfully violate rights to give private access to others, then retaliate when one tries to get such wrongs resolved at higher authority, such requires intervention by the court.

Plaintiff respectfully requests that any denial they answer with that can be proven as lies be treated as wilful perjury and impeachment allowed. Punitive damages for harassment to plaintiff should be allowed for such retaliation. Due process and right to petition government agency and prevent exhausting all levels of the agency by retaliating if Plaintiff goes above lake managers position to complain is harmful to freedom and balance and checks of powers principles of this nation.

25. Plaintiff requests that this Honorable court declare that it is duty of the USACE to enforce the law to all citizens and not give free ride tickets to the renters who are clearly being allowed private sole use of the shoreline at end of Boston street.

26. That this Honorable court declare that the purpose of the easement title should match any rights to the road they may have and sale of the road without giving notice to the taxpayers who's rights are affected as is required by both state and federal law, hiding the fact it is controlled by the corp by the county platt showing it is not in county office for those who check when buying properties and allowing taxpayers money to go to county maintaining the roads along with federal funds being used too.

27. Not putting any signs to prevent use of the lake they admit they knew was being done created in the very least a prescriptive easement right.

28. Declare that pedestrian access should be equal to all residents and property owners who invested for decades into use of such lake access roads and shoreline there, certainly not to go out of their way to exclude disabled people.

29. That USACE should have more than one ADA compliant recreational facility around a lake that is over 800 shoreline miles. There is no justification to not do so.

30. Declare that the USACE cannot redefine access, any policy they are allowed to have to allow disabled persons to use their local shoreline should be 7 miles to nearest ADA compliant access facility not just any access facility.

STATEMENT OF REQUEST FOR JURY TRIAL

For any acts decided by this Honorable court to be outside scope of employment or allowable for a jury trial, Plaintiff does request such trial to be held in this court in Tulsa.



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CERTIFICATION OF SERVICE

This is to certify that this petition shall be served by process server to the defendants listed at Department of the Army Tulsa District Corps of Engineers. 1645 South 101st East Avenue, Tulsa, Oklahoma 74128-4609 and such service shall be filed in court.



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